

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION

UNITED STATES OF AMERICA, for the  
Benefit of L & A CONTRACTING  
COMPANY

PLAINTIFF

VS.

CIVIL ACTION NO. 2:07-cv-57(DCB)(JMR)

FEDERAL INSURANCE COMPANY, and  
BYRD BROTHERS, INC.

DEFENDANTS

ORDER

This cause is before the Court on defendant Byrd Brothers, Inc.'s motion for summary judgment (**docket entry 32**). Having considered the motion and response, the memoranda of the parties and all supporting documents, as well as the applicable law, the Court finds as follows:

On March 16, 2007, the plaintiff, L & A Contracting Company, filed its original complaint in this action against Federal Insurance Company ("Federal") seeking \$1,426,864 for services rendered to AshBritt, Inc., under a performance bond issued by Federal. On June 4, 2007, the plaintiff filed an amended complaint, adding Byrd Brothers, Inc., as an additional defendant, and seeking \$174,485 under two subcontracts with effective dates of September 10, 2005, and October 9, 2005.

Byrd Brothers moves for summary judgment on grounds of settlement and release. On May 12, 2006, L & A had filed suit in the Circuit Court of Forrest County, Mississippi, against AshBritt and Byrd Brothers, based upon a Memorandum of Understanding of September 7, 2005, between Byrd Brothers, as agent of AshBritt, and

L & A. The action was removed to federal court on June 12, 2006. On October 4, 2006, the case was dismissed pursuant to settlement by all parties. While the Settlement Agreement, dated September 18, 2006, contains a general release, it also specifically excludes from the release any claim arising out of the "Subcontract." It is the position of the plaintiff that the release does not apply to the two subcontracts which are the subject matter of the present suit. This issue cannot be resolved by reference to the four corners of the Settlement Agreement. Because the Court finds genuine questions of material fact on this issue, the motion for summary judgment shall be denied. Accordingly,

IT IS HEREBY ORDERED that defendant Byrd Brothers, Inc.'s motion for summary judgment (**docket entry 32**) is DENIED.

FURTHER ORDERED that the hearing on oral argument on the motion for summary judgment, scheduled for March 12, 2009, is hereby cancelled.

SO ORDERED, this the 10th day of March, 2009.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE